

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
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Petition for Approval of the 2016 IPA)	Docket 15-0541
Procurement Plan Pursuant to Section)	
16-111.5(d)(4) of the Public Utilities Act)	

**MIDAMERICAN ENERGY COMPANY’S REPLY COMMENTS AND OBJECTIONS
TO THE ILLINOIS POWER AGENCY’S PROPOSED PROCUREMENT PLAN**

NOW COMES, MidAmerican Energy Company (“MidAmerican”) and hereby submits the following comments and objections pursuant to Section 16-111.5(d) of the Public Utilities Act (“Act”) in response to the Illinois Power Agency’s (“IPA”) Petition for Approval filed with the Illinois Commerce Commission (“Commission”) on September 29, 2015. In support of its comments and objections, MidAmerican states as follows:

1. The 2016 Procurement Plan for the first time includes a procurement plan for a portion of MidAmerican’s multi-jurisdictional load. Petition at 1-3. MidAmerican’s participation introduces new issues not addressed through the development of previous plans. In its the August 14, 2015, draft plan (“Draft Plan”), the IPA addressed MidAmerican’s issues in a thoughtful manner and allowed for further comments on particular issues related to energy efficiency, renewable resource availability, and procurement for MidAmerican. MidAmerican appreciates the IPA’s willingness to meet with MidAmerican and discuss expectations and procedures for the procurement process. These discussions were invaluable and allowed MidAmerican to meet the statutory requirements for its submission and provide the requisite information to the IPA. MidAmerican also appreciates the time and effort expended to develop a thoughtful and well-drafted 2016 Procurement Plan and appreciates the challenges the IPA faced in developing a plan that included MidAmerican’s incremental Illinois jurisdictional load.

2. On April 9, 2015, MidAmerican formally notified the IPA of its intent to procure power and energy for a portion of its eligible retail customer load. Under Section 16-111.5(a) of the Act, “[a] small multi-jurisdictional electric utility . . . may elect to procure power and energy for all or a portion of its eligible Illinois retail customers” in accordance with the planning and procurement provisions found in the Illinois Power Agency Act. 20 ICLS 3855. Specifically, MidAmerican elected to procure through the IPA’s process the portion of MidAmerican’s eligible Illinois retail customer load that represents the “net” or “differential” between MidAmerican’s total eligible retail customer load in Illinois and the amount of power and energy provided by MidAmerican owned generation allocated to Illinois customers. The 2016 Procurement Plan includes the incremental amount of capacity that is not currently served or forecast to be served in Illinois by MidAmerican-owned Illinois jurisdictional generation.

3. The IPA considered, but did not include, all suggestions made to the Draft Plan. Petition at 6. The IPA noted that while not all suggestions were included in its final 2016 Procurement Plan, the IPA does not wish to foreclose development of issues for consideration in this proceeding or in developing future procurement plans. As such, the IPA welcomed additional discussion of issues that were not fully developed in the comments to date through the Commission proceeding. Accordingly, MidAmerican’s objection will address the reasonableness of limiting the renewable resource availability and procurement requirement to the incremental portion of MidAmerican’s load. Additionally MidAmerican will address its support of the change in capacity shortfall hedging strategy from the Draft Plan reflected in the filed 2016 Procurement Plan. MidAmerican also notes that the Appendix D to the 2016 Procurement Plan no longer contains MidAmerican’s proposed Rider PE. While MidAmerican does not object to the exclusion of Rider PE from the 2016 Procurement Plan, MidAmerican is

filing comments below to address cost recovery for the net capacity and energy procured for MidAmerican as part of the 2016 Procurement Plan.

Renewable Resources Availability and Procurement

4. In its Draft Plan, the IPA recognized that MidAmerican's involvement in the 2016 Procurement Plan raises new questions about how to calculate the renewable resource target. *See* 2016 Procurement Plan at 126; Draft Plan at 120-121. Specifically, the IPA noted the statute is unclear as to "whether renewable energy resources procurement should be calculated for all of MidAmerican's eligible retail customer load, or only for that portion of eligible retail customer load for which the utility specifically requests procurement." *Id.*; Draft Plan at 120-121. The IPA 2016 Procurement Plan includes a resource mix where "MidAmerican's renewable resource targets are determined based upon MidAmerican's "total supply to serve eligible retail customers." The IPA's Draft Plan, however, also recognized there are multiple interpretations and the IPA invited further comment.

5. Staff filed comments on September 14, 2015 ("Staff Comments"), in response to the Draft Plan and Staff addressed whether the statutory requirements for MidAmerican's renewable resources was clear. Staff Comments 34-36. Staff argued the statute was clear and that the procurement of renewable resource targets for MidAmerican should be based upon MidAmerican "total supply to serve eligible retail customers." Staff Comments at 35. Therefore, there is an unresolved issue for the Commission to consider regarding MidAmerican's renewable resource mix. MidAmerican objects to the inclusion of a procurement amount for Renewable Energy Credits (RECs), which includes a REC amount based on MidAmerican's entire Illinois jurisdictional load in the 2016 Procurement Plan. MidAmerican continues to

recommend that only the incremental portion of MidAmerican's load is required to procure RECs since that is the only amount that is being sought through the IPA's competitive bid process.

6. The IPA concludes that Section 16-111.5(a) defines "eligible retail customers" to include MidAmerican's entire Illinois jurisdictional load for the purposes of determining the renewable resources when read in conjunction with Section 1-75(c) if the Illinois Power Agency Act. However, the IPA also concludes that it need only procure a portion of MidAmerican's jurisdictional load as outlined in Section 16-111.5(b), as requested by MidAmerican. Therefore, MidAmerican's "eligible retail customers" only include a portion of its Illinois load being procured by the IPA. MidAmerican respectfully argues that Section 16-111.5 must be read in its entirety and any renewable resource target must be based on the portion of the Illinois jurisdictional load being procured by the IPA.

7. Staff also recognizes that MidAmerican is requesting the IPA to procure power and energy for a portion of its Illinois retail load, but Staff also agrees with the IPA's position that the entire jurisdictional load must be included for the purposes of determining the RECs for the 2016 Procurement Plan. Staff points out that the Illinois Power Agency Act provides that:

[a] minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources.

20 ILCS 3855/1-75(c), emphasis added.

Staff pointed out that when interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. *Metro Utility Co. v. Illinois Commerce Commission*, 262 Ill.App.3d 266, 274 (1994). Staff Comments at 35. Staff noted, "[t]he best indication of legislative intent is the statutory language itself." *Id.* Staff also argued "[c]lear and

unambiguous terms are to be given their plain and ordinary meaning. *West Suburban Bank v. Attorneys Title Insurance Fund, Inc.*, 326 Ill.App.3d 502, 507 (2001).” *Id.* Staff also argued “where statutory provisions are clear and unambiguous, the plain language must be given effect, without reading into the language any exceptions, limitations, or conditions the legislature did not express. *Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184-185 (1999).” *Id.* Staff points out the Illinois Power Agency Act “provides that renewables resources shall be based upon the total supply needed by the utility to serve its eligible retail customers” and that if “the legislature had intended for the IPA to purchase renewables based upon a portion of the load that the IPA was procuring for a utility, and not the utility’s total load, then the legislature would have stated that exception in the statute. *Id.* at 35-36.

8. MidAmerican respectfully disagrees with Staff that there is not an exception in the statute. The legislature did provide an exception in Section 16-111.5(a) and (b) of the Act and the 2016 Procurement Plan reflects that intent by including only a “portion” of MidAmerican’s eligible retail load and not MidAmerican’s “total” Illinois retail load. Illinois courts have also held that [w]here the statutory language is ambiguous and the legislative history is not determinative, this court must attempt to resolve the conflict by reference to the entire statute. *Bus. and Prof. People for the Pub. Interest v. Illinois Commerce Comm’n*, 146 Ill. 2d 175, 208, 585 N.E.2d 1032, 1045 (1991). Therefore, the Section 16-111.5(a) and (b) must be read together to ascertain the exception to the “eligible retail customer” carved out for small multi-jurisdictional utilities. Section 16-111.5(a) and (b) read in part:

(a) An electric utility that on December 31, 2005 served at least 100,000 customers in Illinois shall procure power and energy for its eligible retail customers in accordance with the applicable provisions set forth in Section 1-75 of the Illinois Power Agency Act and this Section. A small multi-jurisdictional electric utility that on December 31, 2005 served

less than 100,000 customers in Illinois may elect to procure power and energy for all or a portion of its eligible Illinois retail customers in accordance with the applicable provisions set forth in this Section and Section 1-75 of the Illinois Power Agency Act. This Section shall not apply to a small multi-jurisdictional utility until such time as a small multi-jurisdictional utility requests the Illinois Power Agency to prepare a procurement plan for its eligible retail customers. "Eligible retail customers" for the purposes of this Section means those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service. Those customers that are excluded from the definition of "eligible retail customers" shall not be included in the procurement plan load requirements, and the utility shall procure any supply requirements, including capacity, ancillary services, and hourly priced energy, in the applicable markets as needed to serve those customers, provided that the utility may include in its procurement plan load requirements for the load that is associated with those retail customers whose service has been declared or deemed competitive pursuant to Section 16-113 of this Act to the extent that those customers are purchasing power and energy during one of the transition periods identified in subsection (b) of Section 16-113 of this Act.

(b) A procurement plan shall be prepared for each electric utility consistent with the applicable requirements of the Illinois Power Agency Act and this Section. For purposes of this Section, Illinois electric utilities that are affiliated by virtue of a common parent company are considered to be a single electric utility. Small multi-jurisdictional utilities may request a procurement plan for a portion of or all of its Illinois load. Each procurement plan shall analyze the projected balance of supply and demand for eligible retail customers over a 5-year period with the first planning year beginning on June 1 of the year following the year in which the plan is filed. . .

220 ILCS 16-111.5 (a) and (b), emphasis added.

Subsections 16-111.5(a) and (b) both carve out an exception for MidAmerican's eligible retail load so that only a portion of MidAmerican's total eligible retail customer load represented as the "net" or "differential" between MidAmerican's eligible retail customer load in Illinois and MidAmerican owned generation allocated to Illinois customers, is served through the IPA's procurement planning process. The 2016 Procurement Plan includes the incremental amount of

capacity and energy that is not currently served or forecast to be served in Illinois by MidAmerican-owned Illinois jurisdictional generation. Consequently, the 2016 Procurement Plan does not include the “total supply” to serve eligible retail customers. The 2016 Procurement Plan only includes the incremental amount of energy and capacity not serviced or forecast to be served in Illinois by MidAmerican-owned jurisdictional generation. Thus, the quantity RECs procured should only relate to that portion of the “total supply” procured for MidAmerican’s jurisdictional eligible retail customers that is included in the 2016 Procurement Plan and should exclude the amount of Illinois-jurisdictional load supplied by MidAmerican owned generation.

MidAmerican Capacity Shortfall Hedging Strategy

9. In its initial Draft Plan, the IPA proposed a procurement event to procure the incremental amount of capacity that is not currently served or forecast to be served in Illinois by MidAmerican-owned Illinois jurisdictional generation. IPA Petition at 4. This differential or “shortfall” amounted to 16%-18% of MidAmerican’s Illinois capacity requirements. Staff Comments highlighted that given MidAmerican’s projected shortfall of less than 20%, existing MidAmerican supply “already provides over 80% of the capacity expected to be required over the next five plan years,” while “in the case of Ameren, the IPA proposes to hedge no more than 75% of any future plan period.” Staff Comments at 32-33.

10. Staff explained that given the uncertainty of future capacity requirements and the potential that unnecessary hedges “could end up significantly raising rates,” Staff recommended “that the Plan be modified to reduce the percentage of MidAmerican’s expected capacity requirements to be hedged prior to each delivery year’s MISO planning reserve auction (“PRA”). Staff Comments at 33. After consideration and analysis of Staff’s comments, the IPA agreed,

and modified its filed 2016 Procurement Plan to propose that MidAmerican's projected capacity shortfall be addressed through the MISO PRA and not through an IPA procurement process as originally proposed in Draft Plan. IPA Petition at 5.

11. MidAmerican supports Staff's recommended change and the IPA's modification to the 2016 Procurement Plan.

Appendix D – MidAmerican Load Forecast

12. As the IPA notes, this is the first procurement process in which MidAmerican elected to have the IPA procure power and energy for a portion of its Illinois jurisdictional load. Petition at 2-3. As such, the 2016 Procurement Plan marks the initial procurement plan for MidAmerican. Section 16-111.5(l) provides in part, "[a]n electric utility shall recover its costs of procuring power and energy under this Section. The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered."

13. To address cost recovery for MidAmerican, the Draft Plan included MidAmerican's proposed Rider PE. Staff Comments indicated that Staff had concerns with how MidAmerican would calculate certain defined terms in Rider PE and noted that the cost recovery mechanism must be clarified before Staff can comment further. Staff Comments at 38. The filed 2016 Procurement Plan no longer includes MidAmerican's Rider PE in the Appendix D. To address Staff's concern, MidAmerican will file a separate petition requesting approval of a cost recovery mechanism for a Commission-approved procurement plan. This will allow Staff further time to review Rider PE.

Conclusion

14. Overall, the IPA has developed and proposed a thoughtful and well-drafted Plan and appreciates the challenges the IPA faced in developing a Plan that included MidAmerican's incremental Illinois jurisdictional load. Due to the incremental nature of MidAmerican's procurement and the current statutory constraints, MidAmerican recommends that only the incremental portion of MidAmerican's load is required to procure RECs, which will avoid an unneeded excess procurement.

WHEREFORE, MidAmerican Energy Company respectfully requests the Illinois Commerce Commission accept MidAmerican's proposed modification to reduce the amount of renewable credits to represent only the portion of MidAmerican's Illinois jurisdictional load to be served by power and energy procured through the IPA's 2016 Procurement Plan.

Dated: October 5, 2015.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

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